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From: Pickrel, Jan

Sent: Monday, July 29, 2013 4:21 PM

To: Witt, Richard; Gieck, Stephanie; Phillips, David; Ellens, Newton; Bryant, Robert; Copeland, Stephen; Garcia, Al; Jlovell; Le, Michael; Loston, Anthony; Marshall, Paul; Molina, Rudy; Opie, Jodie; Pimpare, Justin; Rios, Jacqueline; Vantil, Barbara; Whitson, Amelia; Wong, Virginia; Yedavalli, Sreedeevi

Cc: Phillips, Ginny; Roose, Rebecca

Subject: RE: Requirement to include all local limits in IU permits

Thanks, Richard!!

From: Witt, Richard

Sent: Monday, July 29, 2013 4:20 PM

To: Pickrel, Jan; Gieck, Stephanie; Phillips, David; Ellens, Newton; Bryant, Robert; Copeland, Stephen; Garcia, Al; Jlovell; Le, Michael; Loston, Anthony; Marshall, Paul; Molina, Rudy; Opie, Jodie; Pimpare, Justin; Rios, Jacqueline; Vantil, Barbara; Whitson, Amelia; Wong, Virginia; Yedavalli, Sreedeevi

Cc: Phillips, Ginny; Roose, Rebecca

Subject: RE: Requirement to include all local limits in IU permits

I'd just add that the permit shield arises as a result of section 402(k) which provides a shield for compliance with the terms of any permit issued under section 402. Which section provides for the NPDES permit system and NPDES permits, not local pretreatment permits.

From: Pickrel, Jan

Sent: Monday, July 29, 2013 8:27 AM

To: Gieck, Stephanie; Phillips, David; Ellens, Newton; Bryant, Robert; Copeland, Stephen; Garcia, Al; Jlovell; Le, Michael; Loston, Anthony; Marshall, Paul; Molina, Rudy; Opie, Jodie; Pimpare, Justin; Rios, Jacqueline; Vantil, Barbara; Whitson, Amelia; Wong, Virginia; Yedavalli, Sreedeevi

Cc: Phillips, Ginny; Witt, Richard; Roose, Rebecca

Subject: RE: Requirement to include all local limits in IU permits

Hi Newton –

Yes to 'all of the below'.

1) NPDES has "permit as a shield", but pretreatment does not. This is because the pretreatment standards are 'self-implementing'. IF 'permit as a shield' was in effect and 1 specific prohibition that applies to all nondomestic users had been omitted from the IU permit, that would allow that IU from not needing to comply with that specific prohibitions. That's not how we interpret the pretreatment standards. The Affirmative Defense allowed in 403.5(a)(2) puts the onus on the IU to demonstrate its ignorance, not that the Control Authority made the decision that a limit wasn't applicable. In addition, 403.6's opening paragraph regarding Categorical Standards states that "These [categorical] standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part."

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[End Unresponsive Text]

--Jan

From: Phillips, David

Sent: Thursday, July 25, 2013 2:26 PM

To: Ellens, Newton; Bryant, Robert; Copeland, Stephen; Garcia, Al; Gieck, Stephanie; Jlovell; Le, Michael; Loston, Anthony; Marshall, Paul; Molina, Rudy; Opie, Jodie; Pickrel, Jan; Pimpare, Justin; Rios, Jacqueline; Vantil, Barbara; Whitson, Amelia; Wong, Virginia; Yedavalli, Sreedeevi

Subject: RE: Requirement to include all local limits in IU permits

[Text Unresponsive to the FOIA Request Deleted]

[End Unresponsive Text]

I'd also disagree with the "permit as a shield" argument below. If all local limits are in the IU permit, then there is no shield. If they have a compliance condition in the IU permit which references local regulation citing local limits, then that would serve the same purpose as specifically naming all of them in the individual permits. A shield is only present if they have a discharge problem that is somehow not addressed in the permit by reference or specifically.

David R. Phillips

Clean Water Enforcement Branch

U.S. EPA Region 4

404-562-9773 (Tel) 404-562-9729 (Fax)

- Environmental Engineer
- Senior Commissioned Enforcement Officer
- Industrial Pretreatment Program Coordinator

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-----Original Message-----

From: Ellens, Newton

Sent: Thursday, July 25, 2013 3:50 PM

To: Bryant, Robert; Copeland, Stephen; Garcia, Al; Gieck, Stephanie; Jlovell; Le, Michael; Loston, Anthony; Marshall, Paul; Molina, Rudy; Opie, Jodie; Phillips, David; Pickrel, Jan; Pimpare, Justin; Rios, Jacqueline; Vantil, Barbara; Whitson, Amelia; Wong, Virginia; Yedavalli, Sredeeve

Subject: Requirement to include all local limits in IU permits

Hello all,

Last month, we issued a PCI report to an IL control authority. [Text Unresponsive to the FOIA Request Deleted]

[End Unresponsive Text]

The CA's consultant is pushing back against my finding; I've included her draft response below:

[Text Unresponsive to the FOIA Request Deleted]

[End Unresponsive Text] Secondly, if all local limits are in the permit, it allows the use of the 'permit as a shield' defense in enforcement matters.

[Text Unresponsive to the FOIA Request Deleted]

[End Unresponsive Text]

Thanks for your help.

Newton Ellens  
Pretreatment Program Manager  
U.S. Environmental Protection Agency (WC-15J)  
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Chicago, Illinois 60604  
(312) 353-5562